

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2004 MAY 25 P 1:38

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY,
Plaintiff

U.S. DISTRICT COURT
DISTRICT OF MASS.

VS.

C.A. NO. 04CV10203 PBS

ADP MARSHALL, INC., A FLUOR
DANIEL COMPANY AND FIREMAN'S
FUND INSURANCE COMPANY,
Defendants

ADP MARSHALL, INC.,
Plaintiff-in-Counterclaim

VS.

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY,
Defendant-in-Counterclaim

ADP MARSHALL, INC.,
Third-Party Plaintiff

VS.

ALLIED CONSULTING ENGINEERING
SERVICES, INC., ANDOVER CONTROLS
CORPORATION, R&R WINDOW
CONTRACTORS, INC. and DELTA
KEYSPAN, INC. n/k/a DELTA
KEYSPAN, LLC,
Third-Party Defendants

**ANSWER OF THE THIRD-PARTY DEFENDANT,
R & R WINDOW CONTRACTORS, INC., TO THE FIRST AMENDED
THIRD-PARTY COMPLAINT AND DEMAND FOR JURY TRIAL**

1. The third-party defendant admits the allegations set forth in this paragraph.
2. R & R Window Contractors, Inc. does not have sufficient information to either admit or

deny the allegations in this paragraph.

3. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
4. The third-party defendant admits the allegations set forth in this paragraph.
5. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
6. The third-party defendant admits the allegations set forth in this paragraph.
7. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
8. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
9. R & R Window Contractors, Inc. admits that it entered into a contract on December 6, 2000. The specific scope of work is specified in the contract and to the extent that the allegations of this paragraph do not accurately state the scope of work, the allegations are denied.
10. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
11. The third-party defendant admits the allegations set forth in this paragraph.
12. R & R Window Contractors, Inc. admits that a letter dated September 6, 2002 was sent to ADP Marshall, Inc. and further states that the letter speaks for itself.
13. R & R Window Contractors, Inc. admits that a letter was sent to R & R Window Contractors, Inc. by Bob Greenham and further states that the letter speaks for itself.
14. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
15. The third-party defendant admits the allegations set forth in this paragraph.
16. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
17. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.

18. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
19. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
20. The third-party defendant admits the allegations set forth in this paragraph. However, this third-party defendant does not have information relating to service of the complaint.
21. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
22. R & R Window Contractors, Inc. admits that there was a subcontract and that the subcontract speaks for itself. To the extent that this paragraph alleges responsibilities over and above the requirements of the contract, they are denied.
23. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
24. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
25. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
26. R & R Window Contractors, Inc. admits that a letter was sent requesting indemnification and defense.
27. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
28. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.
29. R & R Window Contractors, Inc. does not have sufficient information to either admit or deny the allegations in this paragraph.

COUNT I

30. The third-party defendant restates the answers to paragraphs 1 through 29 of the Complaint.
31. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

32. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT II

33. The third-party defendant restates the answers to paragraphs 1 through 32 of the Complaint.
34. The third-party defendant denies the allegations set forth in this paragraph.
35. The third-party defendant denies the allegations set forth in this paragraph.

WIHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT III

36. The third-party defendant restates the answers to paragraphs 1 through 35 of the Complaint.
37. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.
38. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT IV

39. The third-party defendant restates the answers to paragraphs 1 through 38 of the Complaint.
40. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.
41. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT V

42. The third-party defendant restates the answers to paragraphs 1 through 41 of the Complaint.
43. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT VI

44. The third-party defendant restates the answers to paragraphs 1 through 43 of the Complaint.
45. The third-party defendant denies the allegations set forth in this paragraph.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT VII

46. The third-party defendant restates the answers to paragraphs 1 through 45 of the Complaint.
47. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT VIII

48. The third-party defendant restates the answers to paragraphs 1 through 47 of the Complaint.
49. This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT IX

50. The third-party defendant restates the answers to paragraphs 1 through 49 of the

Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT X

61. The third-party defendant restates the answers to paragraphs 1 through 60 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XI

63. The third-party defendant restates the answers to paragraphs 1 through 62 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XII

71. The third-party defendant restates the answers to paragraphs 1 through 70 of the Complaint.

72. The third-party defendant admits the allegations set forth in this paragraph.

73. The third-party defendant admits the allegations set forth in this paragraph.

74. The third-party defendant denies the allegations set forth in this paragraph.

75. The third-party defendant denies the allegations set forth in this paragraph.

76. The third-party defendant denies the allegations set forth in this paragraph.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XIII

78. The third-party defendant restates the answers to paragraphs 1 through 77 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XIV

85. The third-party defendant restates the answers to paragraphs 1 through 84 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XV

92. The third-party defendant restates the answers to paragraphs 1 through 91 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XVI

99. The third-party defendant restates the answers to paragraphs 1 through 98 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XVII

109. The third-party defendant restates the answers to paragraphs 1 through 108 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XVIII

111. The third-party defendant restates the answers to paragraphs 1 through 110 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

COUNT XIX

121. The third-party defendant restates the answers to paragraphs 1 through 120 of the Complaint.

This count does not apply to R & R Window Contractors, Inc. and therefore we decline to answer.

WHEREFORE, the third-party defendant, R & R Window Contractors, Inc., denies that any party is entitled to judgment against it.

**THE THIRD-PARTY DEFENDANT, R & R WINDOW CONTRACTORS, INC.,
DEMANDS A TRIAL BY JURY OF ALL ISSUES HEREIN.**

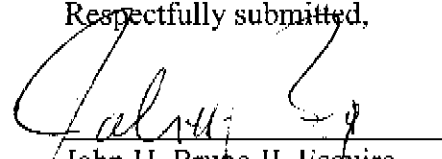
AFFIRMATIVE DEFENSES

1. The Third-Party Plaintiff's injuries and damages were caused in whole or in part by the Third-Party Plaintiff's negligence which was greater than any negligence of the Third-Party Defendant.
2. The Third-Party Plaintiff's injuries and damages were caused by a person or persons or entity or entity for whose conduct this third-party defendant is not responsible.

3. The cause of action asserted in the complaint should be dismissed for failure to state a claim upon which relief could be granted.
4. Any claim against the Third-Party Defendant, R & R Window Contractors, Inc., is barred by doctrines of waiver and/or estoppel.
5. R & R Window Contractors, Inc. has performed all of its obligations under its agreement and contract and is therefore not liable.
6. The third-party defendant says that the alleged contract and indemnity provision is in violation of M.G.L. c.149 §29C.
7. The third-party plaintiff has failed to provide proper notification of the claim.

**THE THIRD-PARTY DEFENDANT, R & R WINDOW CONTRACTORS, INC.,
DEMANDS A TRIAL BY JURY OF ALL ISSUES HEREIN.**

Respectfully submitted,


John H. Bruno II, Esquire
B.B.O. No. 542098
Masi & Bruno
124 Long Pond Road
Unit 11
Plymouth, MA 02360
(508)747-5277

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney(s) of record for each other party by mail / hand on -

5/21/04
